IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 2524 of 2003

Between:

Shaik Babji S/o. late Meera Saheb,

The Defence Estate Office, Visakhapatnam District.

..... PETITIONER

AND

1. The Director General of Defence Estates, R.K. Puram, New Delhi.
2. The Principal Director, Defence Estate, Southern Command, Pune.
3. The Defence Estate Officer, 49-46-4/9A, Simhadri Nivas, Akkayapalem, Visakhapatnam District.
4. The District Employment Officer, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the order in O.A.No.1142 of 2002 dated 3-10-2002 as illegal, arbitrary, unsustainable and consequently set aside the same in so far as negativing the relief sought by the writ petitioner.

Counsel for the Petitioner: MR.V.MALLIK

Counsel for Respondents1 to 3: Mr. A. Rajasekhar Reddy, SC for Central Government.

Counsel for Respondent No.4: G.P. for Services-I.

The Court made the following:

ORAL ORDER: **(per GB,J.)**

This writ petition is filed challenging the order dated 3-10-2002 passed by the Central Administrative Tribunal in O.A.No.1142 of 2002.

2. The petitioner filed O.A.No.1142 of 2002 seeking a declaration that the action of the respondents in conducting recruitment to the post of Chowkidar on temporary basis as illegal and contrary to Articles 16 and 21 of the Constitution of India and consequently to direct the respondents to continue the services of the applicant duly absorbing his services on regular basis with all consequential benefits. It was the case of the applicant that he fell ill in January 2002. After recovery, when he tried to join the duty, the third respondent did not allow him to join the duty, and on the other hand he resorted to filling up of the post of chowkidar through employment exchange. The action of the respondents in not allowing him to join duty was illegal and contrary to law and therefore sought for appropriate directions. The learned Tribunal after considering the matter disposed of the O.A. by order dated 3-10-2002. Not satisfied with the said relief, the petitioner filed the present writ petition.

3. Learned counsel for the petitioner submits that the very discontinuation of the employment of the petitioner is illegal and contrary to law. No notice or any opportunity was given to the petitioner before discontinuing his services. Therefore, the Tribunal ought to have directed reinstatement with continuity of service and other attendant benefits.

4. We have heard the learned Standing Counsel for the Central Government.

5. We are unable to appreciate the contention raised by the learned counsel for the petitioner. It was observed by the Tribunal at paragraph No.5 that there was a number of breaks during the service put in by the petitioner as Chowkidar.

Paragraph-5 of the order passed by the Tribunal reads as under:

> "At the outset, the learned counsel for the respondents made it clear that the respondents are trying to fill up the post of Chowkidar only on casual basis even now, and there is no sanctioned post to be filled up, on regular basis. This position is also made clear in the counter affidavit filed by way of reply by the respondents. So, the prayer of the applicant i.e., his services have to be regularized because he has worked for about 5 years with breaks after every 89 days cannot be accepted, when there is no sanctioned post to be filled up on regular basis."

6. Even referring to the nature of employment of the petitioner, the Tribunal held that the applicant was not entitled for the relief as prayed for and accordingly disposed of the O.A., which reads as under:

> "The learned counsel for the respondents has argued that the applicant, who was taken only as a casual labour, has not acquired any right to seek for the nature of the relief sought for by him in the present application, particularly when the applicant is not continuing in service and continuously remained absent from 10-1-2002. In support of his contention he relied upon a decision of C.A.T., Jaipur Bench in O.A.No.339/2000 dated 28.8.2000, copy of which is produced as Annexure-F where it was held that in view of the settled legal position, a part-time casual labour is not entitled for regularization when there is no sanctioned post for this purpose. However, the candidature of the applicant may be considered in case any part-time safaiwala is engaged in future by taking into consideration the experience gained by the applicant in the post. Placing reliance on the above decision, we find that in the absence of a sanctioned post, the applicant cannot seek for regularization of his services and the applicant cannot seek for regularization of his services and he is not entitled to seek for relief that the respondents shall be allowed to call for fresh applications to fill up the post of Chowkidar from casual labour. Since the facts of the instant case are identical to the facts of the above case, we find that the applicant is not entitled to the nature of the above reliefs sought by him in the present application. However, we find that if his name has been sponsored by the employment exchange for the same post now notified to be filled up, the candidature of the applicant is also to be considered by taking into consideration his experience, gained in that post during last 5 years."

7. We have also considered the contentions of the learned counsel for the petitioner. We do not find any grounds to interfere with the order passed by the Tribunal.

8. Accordingly, the Writ Petition is dismissed. No costs.

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G. Bikshapathy, J.

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B. Seshasayana Reddy, J.

25-01-2005

js.

To

1. The Director General of Defence Estates, R.K. Puram, New Delhi.
2. The Principal Director, Defence Estate, Southern Command, Pune.
3. The Defence Estate Officer, 49-46-4/9A, Simhadri Nivas, Akkayapalem, Visakhapatnam District.
4. The Chairman, Central Administrative Tribunal, Hyderabad.
5. The District Employment Officer, Visakhapatnam District.
5. 2 CCs to G.P. for Services-I, High Court Buildings, Hyderabad.
6. 2 CD copies.